

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Vanderbilt Securities

95-04280

Name of Respondents

Otra Clearing, Inc.  
J.B. Oxford & Co.

**REPRESENTATION**

For Claimant Vanderbilt Securities ("Claimant") appeared Herbert M. Jacobi, Esq., New York City, New York.

For Respondent Otra Clearing, Inc. ("Otra") appeared Stephen B. Wexler, Esq. of the law firm of Wexler & Burkhart located in Mitchel Field, New York.

For Respondent J. B. Oxford & Co. ("Oxford") appeared Kristin A. Linsley, Esq. of the law firm of Munger, Tolles & Olson located in Los Angeles, California.

**CASE INFORMATION**

The Statement of Claim was filed on September 6, 1995.

Claimant's Uniform Submission Agreement was signed on August 21, 1995.

The Statement of Answer was filed by Respondent Otra on November 20, 1995.

Respondent Otra did not file a Submission Agreement.

The Statement of Answer was filed by Respondent Oxford on October 19, 1995.

Respondent Oxford did not file a Submission Agreement.

**HEARING INFORMATION**

Pre-Hearing Conference:	August 6, 1996	-	One Session
Hearing Date(s)/Sessions:	August 21, 1996	-	Two Sessions
	August 22, 1996	-	Two Sessions

The hearing was held at the offices of the National Association of Securities Dealers, Inc. located in New York, New York.

### CASE SUMMARY

Prior to bankruptcy, Claimant was a licensed securities dealer, primarily dealing in modestly priced stocks sold on the over-the-counter markets and the pink sheets. To clear the transactions, Claimant enlisted the services of various clearing agents, including Respondent Otra. To delineate the parties' respective rights, obligations, and duties, a "Fully Disclosed Correspondent Agreement" was signed.

On or about February 7, 1990, Claimant allegedly entered into an agreement whereby Otra was selected as the primary retail clearing agent. As a consideration, Respondent Otra allegedly agreed, in writing ("The Modification Agreement"), that it would provide Claimant with a fixed fee schedule for the duration of one year.

Claimant asserted the importance of the agreement not to increase fees. Claimant alleged that at the time the Modification Agreement was signed, it was in the process of hiring hundreds of stockbrokers from a competing broker-dealer, J.T. Moran ("Moran") which entered into Chapter 11 bankruptcy in 1990. Claimant alleged that Moran's brokers had clients that became dissatisfied, thus, Claimant was sensitive to the need of maintaining a reasonable fee structure in order to ensure customer good will and loyalty.

Claimant alleged that in the summer of 1990, Respondent Otra imposed a \$25.00 additional maintenance charge on all of Claimant's customers whose accounts were cleared by Respondent Otra.

Claimant alleged that Respondent Otra is liable for breaching the contract, and the duty of commercial good faith and fair dealing. Due to the breach, Claimant alleged that many customers requested the termination of their accounts, which resulted in damages and economic hardship that includes the collapse of an ongoing business, loss of capital investment, and injury to goodwill and business reputation.

In addition to the breach of contract and breach of duty claims, Claimant alleged that Respondent Otra was indebted to it for the sum of \$16,000.00, which represents accrued commissions, trading profits and other fees owed as a result of Claimant's pre-bankruptcy trading activity.

Claimant alleged that Respondent JB Oxford is liable as the successor in interest to Respondent Otra, which has changed its name to Reynolds, Kendrick Stratton, Inc. ("RKS"). In support of this allegation, Claimant stated that RKS continued in the clearing business until Oxford was licensed as a broker/dealer, that RKS's officers and directors who had been Otra's officers and directors acted in such capacity for JB Oxford, and that JB Oxford maintained its office space in the office previously occupied by RKS.

Respondent Otra asserted that the additional fee charged did not cause Claimant's demise. Respondent Otra stated that the maintenance fee was not charged to Claimant's customers until September of 1990, which was the same month that Claimant filed bankruptcy. To support its assertion, Respondent Otra introduced evidence showing that, as of September 1990, the number of "registered representatives" employed by Claimant had fallen by more than 60% in a six-month period. In addition, Respondent Otra asserted that at approximately the same time, Claimant's principal was the subject of an NASD disciplinary action, and was fined \$34,000.00 and suspended from the NASD for a period of 30 days.

Respondent Otra also contended that the fee was consistent with the industry-wide practice and was offset at least in part by a reduction in fees charged to Claimant for services rendered pursuant to the Agreement.

Finally, Respondent Otra asserted that the nature of this litigation is based on frivolous claims raised by Claimant in a desperate attempt to extract a settlement from Otra as to the "security deposit" retained by Otra following the bankruptcy. Respondent further asserted that the \$16,000.00 sought by Claimant was a "security deposit," which has been offset against the Claimant's debt exceeding \$150,000.00.

Respondent JB Oxford motioned for dismissal based on the contention of lack of privity. Allegedly, JB Oxford and RKS are two separate, wholly-owned subsidiaries of one parent corporation, JB Oxford Holdings, Inc. Respondent JB Oxford contended that it holds a separate and distinct broker/dealer registration from its parent company. Respondent JB Oxford further contended that only three people have served as officers and/or directors of both JB Oxford and RKS.

### **RELIEF REQUESTED**

Claimant requested an award jointly and severally against respondents for:

- a. Compensatory damages on its action for breach of contract, in the amount to be in excess of \$1,000,000.00.
- b. Compensatory damages on its action to recover accrued commissions, trading profits, and other fees owed as a result of Claimant's pre-bankruptcy trading activity, in the amount of \$16,000.00.

Respondent Otra requested that the Statement of Claim be dismissed in its entirety and that the panel award respondent its costs.

Respondent JB Oxford requested that the Statement of Claim be dismissed in its entirety.

### **OTHER ISSUES CONSIDERED & DECIDED**

The arbitrators made the following rulings concerning Respondent Otra and Respondent JB Oxford who filed an answer in this arbitration, but failed to file an executed Submission Agreement with the NASD:

1. Pursuant to Section 1 of the NASD Code of Arbitration Procedure (the "Code") the arbitrator found subject matter jurisdiction over this entire controversy and specifically as it related to Respondent Otra and Respondent JB Oxford.
2. The arbitrators found that Respondent Otra and Respondent JB Oxford were members of the NASD at the time the controversy arose. Consequently, the arbitrator found personal jurisdiction over Respondent Otra and Respondent JB Oxford, pursuant to Section 8 of the Code.
3. The arbitrators found that the Statement of Claim was properly served upon Respondent Otra and Respondent JB Oxford, pursuant to Sections 25(a) and (c) of the Code.

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4. Consequently, the arbitrators found that, pursuant to Section 25(b) of the Code, Respondent Otra and Respondent JB Oxford were required to execute and file with the NASD a properly executed Submission Agreement.

#### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent JB Oxford asserted a Motion to Dismiss which was granted prior to the conclusion of the case.
2. Claims against Respondent Otra be and are hereby dismissed, with prejudice.
3. Each party shall bear their respective costs, including attorney's fees.
4. All other claims are hereby denied.

#### **FORUM FEES**

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

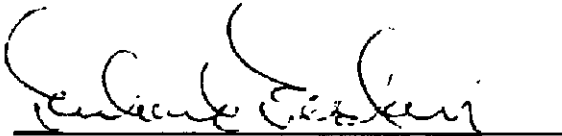
1 Pre-hearing Conference	@ \$1,000.00	=	\$1,000.00
4 Hearing Sessions	@ \$1,000.00	=	\$4,000.00
Minus Hearing Session Deposit		=	\$1,500.00
Total Fees Outstanding		=	\$3,500.00

Claimant be and hereby is liable and shall pay to the NASD the sum of **\$1,750.00**, representing one-half of the outstanding forum fees.

Respondent Otra is liable and shall pay to the NASD the sum of **\$1,750.00**, representing one-half of the outstanding forum fees.

Fees are payable to the National Association of Securities Dealers, Inc.

**ARBITRATORS' SIGNATURE**



Richard S. Peskin, Esq.  
Industry Chairperson

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James R. Madan  
Industry Panelist

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Alan Jaffee  
Industry Panelist

**AFFIRMATION**

I, **RICHARD S. PESKIN, ESQ.**, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.



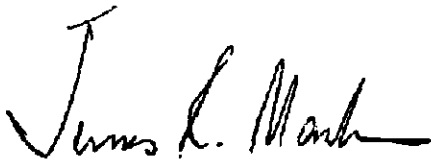
Richard S. Peskin, Esq.

Date of Decision: October 4, 1996

**ARBITRATORS' SIGNATURE**

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Richard S. Peskin, Esq.  
Industry Chairperson



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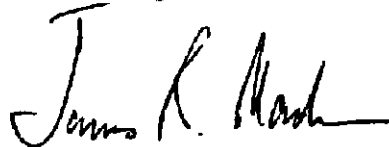
James R. Madan  
Industry Panelist

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Alan Jaffee  
Industry Panelist

**AFFIRMATION**

I, **JAMES R. MADAN**, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules. that this is my decision in the above captioned matter.



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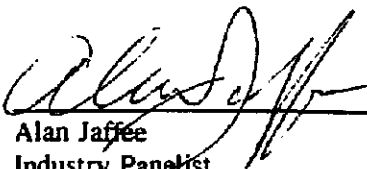
James R. Madan

Date of Decision: October 24, 1996

**ARBITRATORS' SIGNATURE**

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Richard S. Peskin. Esq.  
Industry Chairperson

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James R. Madan  
Industry Panelist

  
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Alan Jaffee  
Industry Panelist

**AFFIRMATION**

I, ALAN JAFFEE, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rule;;  
that this is my decision in the above captioned matter.

  
\_\_\_\_\_  
Alan Jaffee

Date of Decision: October 4, 1996